

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>HARRY J. SMITH,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ.Act.No. 07-408-JJF
	)	
<b>THOMAS CARROLL,</b> Warden	)	
and <b>JOSEPH R. BIDEN, III,</b> Attorney	)	
General for the State of Delaware	)	
	)	
Respondents.	)	

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Harry J. Smith, has applied for federal habeas relief, alleging a Double Jeopardy violation relating to his 1998 Violation of probation sentence. D.I. 2. By the terms of the Court's order, the answer is due to be filed on September 13, 2007.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts. However, due to the one vacancy currently in the Appeals Division, the workload for the remaining attorneys has greatly increased. Counsel is doing his best to prioritize cases by date received. In the past three weeks, counsel has filed responsive pleadings in three state court matters and one federal habeas action. Further, counsel is currently preparing for argument before the Delaware Supreme Court scheduled, on an expedited basis, for September 19, 2007. Counsel will

also be out of the office on a previously scheduled vacation between September 20, 2007 and September 26, 2007. Finally, the Chief of the Appeals Division must review all filings prior to submission and has been unable to do so due to his own substantial caseload and illness within the past two weeks. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including October 3, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ James T. Wakley  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 4612

DATE: September 12, 2007

**RULE 7.1.1 CERTIFICATION**

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ James T. Wakley  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Counsel for Respondents

Date: September 12, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2007, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on September 13, 2007, I will mail, by United States Postal Service, the same documents to the following non-registered participant:

Harry J. Smith  
SBI # 00154166  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/ James T. Wakley  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 4612  
james.wakley@state.de.us

Date: September 12, 2007

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General for the State of Delaware	)	
	)	
Respondents.	)	

**ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before October 3, 2007.

\_\_\_\_\_  
United States District Judge